

Amendments to House Bill No. 76
1st Reading Copy

Requested by Representative Tom Jacobson

For the House Human Services Committee

Prepared by Sue O'Connell
March 20, 2013 (9:37am)

1. Title, page 1, line 8.
Strike: "PROVIDING AN APPROPRIATION;"
Following: "MCA;"
Insert: "PROVIDING FOR CONTINGENT VOIDNESS;"
2. Title, page 1, line 9.
Following: "DATE"
Insert: "AND A TERMINATION DATE"
3. Page 1, line 25.
Strike: "governor," through "senate,"
Insert: "attorney general"
4. Page 2, line 5.
Strike: "governor"
Insert: "attorney general"
5. Page 2, line 6.
Strike: "governor"
Insert: "attorney general"
6. Page 2, line 11.
Strike: "The"
Insert: "Subject to available funding, the"
7. Page 3, line 10.
Following: "governor"
Insert: ", the attorney general,"
8. Page 6, line 20.
Following: "ombudsman"
Insert: "provided for in [section 1]"
9. Page 7, line 10 through line 12.
Strike: section 10 in its entirety
Renumber: subsequent sections
10. Page 7, line 15.
Following: "part of"

Strike: "Title 52, chapter 2"
Insert: "Title 41"
Following: "provisions of"
Following: "Title 52, chapter 2,"
Insert: "Title 41"

11. Page 7, line 17.

Insert: "NEW SECTION. **Section 11. Contingent voidness.** If House Bill No. 2 does not appropriate money to the department of justice for the purposes of [sections 1 through 8], then [this act] is void."

12. Page 7, line 19.

Insert: "NEW SECTION. **Section 13. Termination.** [This act] terminates June 30, 2015."

- END -

Explanation - These changes would have the attorney general, rather than the governor, appoint the ombudsman and would strike the appropriation. A new "contingent voidness" clause would void HB 76 if money for the office is not included in House Bill 2.

HOUSE BILL NO. 76

INTRODUCED BY C. PEASE-LOPEZ

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN INDEPENDENT OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; DESCRIBING THE DUTIES AND POWERS OF THE OFFICE; ESTABLISHING A SPECIAL REVENUE ACCOUNT FOR THE RECEIPT OF GRANTS, GIFTS, AND BEQUESTS TO THE OFFICE; ~~PROVIDING AN APPROPRIATION; AMENDING SECTION 41-3-205, MCA, AND PROVIDING AN EFFECTIVE DATE.~~ PROVIDING FOR CONTINGENT VOIDNESS, AND A TERMINATION DATE"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Office of child and family ombudsman established. (1) There is an office of the child and family ombudsman.

(2) As used in this part, "ombudsman" means the office of the child and family ombudsman.

(3) The ombudsman is allocated to the department of justice for administrative purposes only as prescribed in 2-15-121.

NEW SECTION. Section 2. Purpose and intent. The legislature finds that:

(1) an independent, impartial, and confidential ombudsman can serve to protect the interests and rights of Montana's children and families; and

(2) an independent, impartial, and knowledgeable ombudsman can work collaboratively with the department to strengthen the department's child and family services.

NEW SECTION. Section 3. Appointment -- term. (1) The governor, with the consent of the ~~senator~~ ^{attorney general}, shall appoint an individual who is a resident of this state and is qualified by training and experience to perform the duties of the ombudsman as provided in [section 6].

(2) The appointment must be made from a list of at least three persons prepared and submitted by a committee consisting of:

(a) two attorneys appointed by the Montana bar association;

- 1 (b) two district court judges appointed by the chief justice of the Montana supreme court;
2 (c) one medical doctor appointed by the Montana medical association;
3 (d) one psychologist appointed by the Montana psychological association;
4 (e) one social worker appointed by the Montana chapter of the national association of social workers;
5 (f) one person appointed by the ~~governor~~ ^{attorney general} as a representative of private children's agencies;
6 (g) one person appointed by the ~~governor~~ ^{attorney general} as a representative of the general public; and
7 (h) one person appointed by the director of the department.

8 (3) The ombudsman holds office for a term of 5 years and continues to hold office until a successor is
9 appointed.

10 Subject to available funding,
11 NEW SECTION. Section 4. Staff. ~~The~~ ombudsman may select, and the department of justice shall hire
12 as provided in 2-15-121, necessary staff to carry out the provisions of [sections 1 through 8]. Staff must be under
13 the supervision of the ombudsman.

14
15 NEW SECTION. Section 5. Independence. The ombudsman acts independently of the department
16 of public health and human services in the performance of the duties of the office.

17
18 NEW SECTION. Section 6. Duties. The duties of the ombudsman are to:

19 (1) ensure that each child under the jurisdiction of the department, and in appropriate cases an individual
20 interested in the child's welfare, is apprised of the child's rights under the law;

21 (2) take all possible action, including but not limited to programs of public education and advocacy, to
22 pursue the legal, civil, and special protections of children;

23 (3) help interested parties obtain any information pertaining to the case work and procedures of the
24 department that they are entitled to under the law;

25 (4) review complaints and investigate, in accordance with the powers provided for in [section 7] and with
26 procedures adopted and made publicly available by the ombudsman, those complaints that indicate, in the
27 opinion of the ombudsman, that a child might be in need of assistance from the ombudsman;

28 (5) investigate, in accordance with the powers provided for in [section 7] and with procedures adopted
29 and made publicly available by the ombudsman, the circumstances relating to the death of any child who has
30 received services from the department;

1 (6) when the ombudsman's investigation related to a complaint or a death appears to warrant it, share
2 the relevant findings, subject to the disclosure restrictions and confidentiality requirements provided in [section
3 7], with individuals or entities that are legally authorized to receive, inspect, or investigate reports of child abuse
4 or neglect;

5 (7) provide training and technical assistance to guardians ad litem and special advocates appointed by
6 a district court to represent children in proceedings before that court;

7 (8) periodically review the procedures used by the department with a view toward the rights of children;

8 (9) recommend to the department changes in its procedures and support the department's
9 implementation of the changes with appropriate training or technical assistance; and

10 (10) annually submit to the governor, ^{the attorney general,} and the legislature a detailed report analyzing the work of the
11 ombudsman and any recommendations resulting from it.

12
13 **NEW SECTION. Section 7. Powers of ombudsman.** (1) The ombudsman has, subject to subsection
14 (2), the power to:

15 (a) communicate privately with any child under the jurisdiction of the department;

16 (b) inspect, copy, or subpoena department records, including case notes, correspondence, evaluations,
17 videotapes, and interviews pertaining to any child under the jurisdiction of the department who is alleged to be
18 abused or neglected;

19 (c) request that individuals or entities outside the department that are legally authorized to receive,
20 inspect, or investigate reports of child abuse or neglect provide information related to a complaint or death that
21 the ombudsman is investigating;

22 (d) file amicus curiae briefs on behalf of a parent or child;

23 (e) take appropriate steps to see that persons are made aware of the services and procedures of the
24 office of the child and family ombudsman, its purpose, and how it can be contacted; and

25 (f) apply for and accept grants, gifts, and bequests of funds from other states, federal and interstate
26 agencies and independent authorities, and private firms, individuals, and foundations for the purpose of carrying
27 out the duties of the ombudsman.

28 (2) The ombudsman is subject to the disclosure restrictions and confidentiality requirements provided
29 in 41-3-205.

(8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (7) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(9) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

NEW SECTION. Section 10. Appropriation. (1) There is appropriated from the general fund to the department of justice \$250,000 for the biennium beginning July 1, 2013.

(2) The appropriation must be used for the purposes described in [sections 1 through 8].

NEW SECTION. Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of ~~Title 52, chapter 2~~ ^{Title 41}, and the provisions of ~~Title 52, chapter 2~~ ^{Title 41} apply to [sections 1 through 8].

NEW SECTION. Contingent voidness - - -

NEW SECTION. Section 12. Effective date. [This act] is effective July 1, 2013.

NEW SECTION. Termination - END - JUNE 30, 2015.